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Exploring the effects of the Iran overture

As Reagan mission is detailed, legal, political issues surface

President Reagan acknowledged last week that for the past 18 months, members of his National Security Council had been meeting with Iranian officials in an effort to open a diplomatic channel and to free American hostages, and that he had authorized the shipment of weapons to Iran. This examination by Stephen Kurkjian, William Beecher, Fred Kaplan and Adam Pertman of the Globe's Washington bureau seeks to describe the operation, to measure congressional reaction to it and to assess its legal implications.

WASHINGTON – The two New Englanders who are among those charged with knowing the most sensitive secrets of the US government learned of the operation the same way that everyone else in America did, except for a handful of people inside the White House – they picked up their morning newspapers.

But as the attention of most readers was focused on coverage of the elections that were to take place that day, Nov. 4, the eyes of Sens. William S. Cohen (R-Maine) and Patrick J. Leahy (D-Vt.) were riveted on the relatively modest stories in the Washington and New York papers: A pro-Syrian news magazine in Beirut was reporting that the United States and Iran had engaged in secret talks that involved an exchange of military supplies for American hostages held in Lebanon.

"I know enough to take with a grain of salt any news item that comes out of that corner of the world," said Cohen, who, like Leahy, is a member of the Senate Select Committee on Intelligence. "My first reaction was, 'It couldn't be. They'd never try anything that hairy.' "

But less than two weeks later, after a cascade of news coverage had confirmed the essential outline of the story, President Reagan, in a hastily called address to the nation, acknowledged that for the past 18 months members of his National Security Council had been meeting with two groups of Iranian officials in an effort to open a diplomatic channel with Iran and free the hostages.

During that period of negotiations, Reagan had publicly referred to Iran as the "new international version of Murder Incorporated." Now, he was admitting that he had authorized the shipment of weapons, albeit "defensive" in nature, to the government of Ayatollah Ruhollah Khomeini.

Reagan and his advisers have stressed that the mission had been carried out for diplomatically secure and honorably intentioned reasons.

They hoped to bring an end to the six years of hostile relations between the two countries and to bring home the hostages, who, by most accounts, have been living in a captive hell.

On a humanitarian level, the mission has met with a degree of success for Reagan, who has become so concerned about the safety of the hostages that he is reported to have been asking about their status at practically every morning meeting he has had with his top advisers.

Three of the Americans – Rev. Benjamin Weir, Rev. Lawrence Martin Jenco and David P. Jacobsen – have been returned. Also, there has been no indication of any terrorist acts by Iran since the talks began.

But as for normalizing relations with the strategically vital country, the US mission apparently has fallen far short of its mark. And five or six American hostages – William Buckley has reportedly been killed but no body has been found – are still being held.

By week's end, some of the mullahs closest to Khomeini were mocking the president's efforts. And congressional leaders, diplomatic specialists and allies were raising serious questions about the expertise of the foreign policy apparatus of the Reagan administration.

The 21-nation Arab League, whose members generally support Iraq, an Arab nation, in its war with non-Arab Iran, called Reagan's initiative a "new and dangerous" element in relations between the Arab world and the United States.

The league's secretary general, Chedli Klibi, criticized the arms deliveries as a "flagrant violation" of the professed US neutrality in the six-year war, and called reports of Israel's role in the clandestine arrangement particularly disturbing.

While Foreign Minister Shimon Peres has denied that Israel had sold arms to Iran, Defense Minister Yitzhak Rabin would say only that his country had never sold any military items without the authorization of the United States.

Israel described as key

Others, however, said that Israel's role as an intermediary was key, especially in the first shipment of military supplies that arrived in Iran on Sept. 14, 1985, the same day Weir, a Presbyterian minister, was released.

Quoting unnamed US officials, The New York Times reported on Thursday that the plane, a DC-8 cargo plane, delivered military equipment to Iran as part of the hostage negotiations.

After Weir's release, according to The Washington Post, Reagan called Peres to thank him for Israeli's cooperation. While refusing to confirm that Israel had been involved in any shipments, the White House chief of staff, Donald T. Regan, said Friday that the Israelis were "trying to be helpful to the United States in whatever way they could."

The United States used a foreign intermediary in the 1985 shipment to Iran. In the early contacts, Iranian officials voiced concern that the middle-level officers

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of the National Security Council who conducted the early negotiations might not be speaking for Reagan.

Knowing that only the president could order a shipment of weapons to Iran because of the 1979 arms embargo signed by President Carter, the Iranian officials asked that US military supplies be delivered to them.

Cabinet split

The request divided Reagan's foreign policy advisers. Among those who opposed the move were Secretary of State George P. Shultz and Defense Secretary Caspar W. Weinberger.

Most troublesome to specialists in the field has been Reagan's decision to shun the advice of caution from his institutional foreign policy advisers and follow the recommendation of Adm. John M. Poindexter, his assistant for national security affairs.

Speaking of the State and Defense departments, one former national security adviser said: "Those bureaucracies are the embodiment of the wisdom of the past and you can run the risk of carrying out a politically-motivated and amateurish operation."

But Reagan decided to go ahead with the decision to provide arms to the Iranians.

Four months after the first shipment, he signed into law a secret executive order that allowed the United States to lift the embargo and carry out its own shipment of military supplies to Iran.

At the same time, he ordered in writing that the Central Intelligence Agency play an "operational" role in the negotiations and that the agency deliberately withhold their involvement from House and Senate intelligence agencies.

Although the administration is required to inform Congress of significant planned CIA intelligence activities, officials said that the president had the legal authority to begin covert operations without immediately informing Congress. Several key Republican and Democratic members of Congress disagreed.

After the first shipment went out, and with the Iranian officials assured that the National Security Council officers represented Reagan, further talks were held. At least one took place in London and another in the United States, Regan said.

According to Regan, a sense of bartering enveloped the talks, with the Iranians seeking more military supplies, especially spare parts for their aging jet aircraft, and the Americans asking for more signs of good faith, such as release of more hostages.

"In the Middle East you never do anything in the first hour or first day," Regan said on Friday. "There have to be a number of conversations and visits and this has happened."

Despite the prolonged negotiations, Regan said, the United States never knew what connection the Iranian officials had with Khomeini.

And when the talks with a first group broke down and discussions began with a second, more radical faction, the United States still did not know if Khomeini had approved of the negotiations.

The most that is known, Regan said, is that "these people are not opposed to the ayatollah; they are part of his government."

The talks with the second group reached an intense phase last spring, and in May Reagan authorized Robert C. McFarlane, his former national security advisor, to make a secret visit to Tehran. Accompanying McFarlane were several other US officials, including Col. Oliver North Jr. of the National Security Council staff.

There is disagreement on the success of McFarlane's trip. According to the White House, McFarlane's group met with Iranian officials and furthered the negotiations. Hojatoleslam Hashemi Rafsanjani, the speaker of Iran's Parliament, has asserted that McFarlane's group was locked in a Tehran hotel room and was never allowed to confer with any Iranians.

Adding further confusion to McFarlane's role is a report in the latest edition of the same Beirut-based magazine that originally broke the story of the negotiations.

According to that magazine, as-Shiraa, McFarlane made two trips to Tehran, in July and September, and, more significantly, took airplane spare parts to Iran and turned them over to the Iranian Air Force.

"It was only after the air force improved its performance as a result of the US supplies, by shooting down three Iraqi jets inside five days, that the Iranian government was convinced of the seriousness of the American offer," the magazine said.

The White House, however, insists that since planes are considered "offensive" in nature, no spare parts were ever delivered to the Iranians – not in the first shipment that was allegedly made through Israeli intermediaries and not in the second two, which reportedly took place last July and October.

At about the time the second two shipments were reported to have been made, Shiite Moslems successively released two other American hostages, Jenco, a Roman Catholic priest, and Jacobsen, director of the American University Hospital in Beirut.

But the White House, in an effort to show that it had not betrayed the Western policy not to provide ransom to terrorist groups, has been forced to say that such releases were only "coincidental" to the shipments.

Or, as Reagan told a group on Friday, "that the Iranians have used their influence to help free American hostages in Lebanon has been a bonus that has come with the opening of these channels of communication."

The backlash on Capitol Hill

By secretly using his National Security Council to orchestrate a new policy toward Iran, Reagan has provoked a backlash in Congress, and members foresee not only committee investigations but also legislative attempts to prevent future enterprises of this type.

Most of the complaints about the White House operation have centered on the effects of linking of arms shipments to Iran with Iran's help in getting American hostages released from Lebanon. Still, Congress plans to focus its investigations less on the results of the initiative than on its origins.

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They maintain that the plan was conceived and executed by the National Security Council in an attempt to escape congressional scrutiny, since the federal agencies that could have run such an operation are legally subject to oversight by various committees in both houses.

Some officials at those other agencies, the State Department, the Defense Department, also were upset that they had been excluded from the process.

Sen. Robert Byrd (D-W.Va.), who is expected to become the chamber's majority leader in January, has directed his staff to write legislation mandating that all US covert operations be reported to appropriate congressional leaders. He has suggested that the president's national security adviser may have to become subject to Senate confirmation as well.

The first of the congressional probes, by the House Intelligence Committee, is scheduled to begin as early as next Friday, and more are anticipated when the 100th Congress convenes in January.

The Judiciary, Foreign Affairs and Intelligence committees in both chambers are considering holding hearings, and a source on the House Armed Services Committee said the panel's chairman, Rep. Les Aspin (D-Wis.), had directed his staff to determine if it should do the same.

Leahy, the ranking Democrat on the Senate Intelligence Committee, said the result of increased congressional supervision would be to impair some covert operations. But he asserted that legislators may impose restrictions anyway if "the president doesn't develop a sense of responsibility."

"I have warned them that it's a very, very dangerous thing they're doing," Leahy said, referring to the administration.

"If the president doesn't make it clear that he knows this was a poor policy," he said, "they run the real risk of Congress cutting them off entirely."

• Leahy has been among the most vocal critics of the administration policy. He has maintained that the White House had undermined the chances for a bipartisan foreign policy, and argued that it acted on dubious legal grounds.

"It's not against the law to have diplomacy operating out of there," he said of the National Security Council, "but it is, at the very least, a violation of the spirit of the law if you're doing it to avoid oversight procedures."

Leahy was referring to Section 501 of the National Security Act, which provides guidelines for notifying congressional leaders regarding covert operations.

The standard procedure is to notify the heads of both parties and pertinent committee chairman before an operation takes place. If the operation is sensitive, only four top GOP and four Democratic officials have to be notified, and if an operation is extraordinarily sensitive, the act stipulates only that notification take place "in timely fashion."

The administration maintains that the last criterion applied in this case, and that proper notification of Congress had been made last week. Regan, told reporters Friday that Attorney General Edwin Meese 3d had investigated the question and had determined that no laws had been broken.

Leahy, voicing a criticism other members of Congress have made, said he did not believe that "the definition of timely is ... after there have been so many leaks that we've already read about it in the papers."

The Diplomatic Security and Anti-Terrorist Act of 1986 forbids the transfer of more than $1 million in munitions or military technology to any country that the Secretary of State has identified as aiding or conducting terrorism. Iran has been tagged as such a country.

The act notes that the president may waive this prohibition, but only if he determines the transfer is "important" to national security and if he submits to Congress a report "describing the proposed export" and justifying his decision. The act also says the waiver expires after 90 days from the time the report is delivered to Capitol Hill.

Apparent violation

Congressional officials say the words "proposed sale" and the provision of an expiration date for the waiver indicate that the president is required to submit the waiver and report before the sale is made. President Reagan did not do that in this case.

The act was signed into law on Aug. 27. The last arms delivery, which was reportedly sent to Iran in October, thus would have gone to Iran well after the law went into effect.

Reagan and his officials have been deliberately vague on just what was been delivered to Iran. But they have suggested that it may have included such "defensive" weapons as antiaircraft and antitank missiles.

There also has been no official word on how much was transported. But using the White House's description that the supplies could fit into a cargo plane, such as a C-5 or 747, observers have speculated that the material's worth was well above the $1 million threshold of the 1986 law.

According to the Air Force, the the C-5 can be loaded with 769,000 pounds of cargo. According to a Boeing spokesman, the 747 can carry 775,000 pounds.

Said a House aide, "Even if we sold them hamburgers, it would cost more than that."

Complicating court cases

From another legal angle, Justice Department officials are reportedly concerned that revelations of the secret arms sales could seriously complicate prosecution of dozens of people on trial on charges of smuggling weapons to Iran.

Meese, as a member of the National Security Council, took part in the decision to sell arms to Iran – while at the same time, donning his hat as attorney general, pushing hard for arrests and convictions of US citizens privately doing the same thing.

At a breakfast with reporters on Friday, Regan said, when asked about this point, "The president has certain powers that are given to determine foreign policy that are not given to ordinary citizens."